

§ 779.331

both not for resale and recognized as retail.

§ 779.331 Meaning of sales “for resale.”

Except with respect to a specific situation regarding certain building materials, the word “resale” is not defined in the Act. The common meaning of “resale” is the act of “selling again.” A sale is made for resale where the seller knows or has reasonable cause to believe that the goods or services will be resold, whether in their original form, or in an altered form, or as a part, component or ingredient of another article. Where the goods or services are sold for resale, it does not matter what ultimately happens to such goods or services. Thus, the fact that the goods are consumed by fire or no market is found for them, and are, therefore, never resold does not alter the character of the sale which is made for resale. Similarly, if at the time the sale is made, the seller has no knowledge or reasonable cause to believe that the goods are purchased for the purpose of resale, the fact that the goods later are actually resold is not controlling. In considering whether there is a sale of goods or services and whether such goods or services are sold for resale in any specific situation, the term “sale” includes, as defined in section 3(k) of the Act, “any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.” Thus, under the definition sales by an establishment to a competitor are regarded as sales for resale even though made without profit. (*Northwestern-Hanna Fuel Co. v. McComb*, 166 F. 2d 932 (CA-8).) Similarly, sales for distribution by the purchaser for business purposes are sales for resale under the “other disposition” language of the definition of “sale” even though distributed at no cost to the ultimate recipient. (See *Mitchell v. Duplicate Photo Service*, 13 WH Cases 71, 31 L.C. Par. 70,287 (S.D. Cal. 1956) accord, *Mitchell v. Sherry Corine Corporation*, 264 F. 2d 831 (CA-4) (sale of meals to airlines for distribution to their passengers).) It should be noted, however, that occasional transfer of goods from the stock of one retail or service establishment to relieve a shortage in another such establish-

29 CFR Ch. V (7-1-12 Edition)

ment under the same ownership will not be considered as sales for resale.

§ 779.332 Resale of goods in an altered form or as parts or ingredients of other goods or services.

Sale for resale includes the sale of goods which will be resold in their original form, in an altered form, or as a part or ingredient of another article. A sale of goods which the seller knows, or has reasonable cause to believe, will be resold after processing or manufacture is a sale for resale. Thus, sales of parts with the expectation that they will be incorporated in aircraft and that the aircraft will be sold clearly are sales for resale. (*Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388.) Similarly, the sale of lumber to furniture or box factories, or the sale of textiles to clothing manufacturers, is a sale for resale even though the goods are resold in the form of furniture or clothing. The principle is also illustrated in cases where the article sold becomes a part or an ingredient of another, such as scrap metal in steel, dyes in fabrics, flour in bread and pastries, and salt in food or ice in beverages. (*Mitchell v. Douglas Auto Parts Co.*, 11 WH Cases 807, 25 L.C. Par. 68, 119 (N.D. Ill., 1954).) The fact that goods sold will be resold as a part of a service in which they are used or as a part of a building into which they are incorporated does not negate the character of the sale as one “for resale.” (*Mitchell v. Furman Beauty Supply*, 300 F. 2d 16 (CA-3); *Mayol v. Mitchell*, 280 F. 2d 477 (CA-1), cert. denied 364 U.S. 902; *Goldberg v. Kleban Eng. Corp.*, 303 F. 2d 855 (CA-5).)

§ 779.333 Goods sold for use as raw materials in other products.

Goods are sold for resale where they are sold for use as a raw material in the production of a specific product to be sold, such as sales of coal for the production of coke, coal gas, or electricity, or sales of liquefied-petroleum-gas for the production of chemicals or synthetic rubber. However, the goods are not considered sold for resale if sold for general industrial or commercial uses, such as coal for use in laundries, bakeries, nurseries, canneries, or for space heating, or ice for use by grocery stores or meat markets in cooling